IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.93 OF 2004

K. & A. Securities Pvt.Ltd. ... Petitioners

v/s

Shipla Stock Brokers Pvt.Ltd. ... Respondents

Mr Londhe i/b M/s Sanjay Udeshi and Co. for Petitioners.

Mr A.A. Mukhri i/b M/s Purohit and Co. for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 2ND MAY 2005

P.C.: -

1. By this petition, the petitioners challenge an award made by the Sole Arbitrator as also the Appellate Authority under the bye-laws of the Bombay Stock Exchange. The first challenge to the award is that the claim is barred by the law of limitation. According to the petitioners, the cause of action arose on 24th November 2001 but the reference was made in July 2002. This objection was not admittedly raised before the Sole Arbitrator, it was raised before the Appellate Authority. The Appellate Authority has dealt with this objection and has observed that the limitation for making claim was extended because of acknowledgment of liability by the petitioners. The acknowledgment was by letters dated 19th December 2001, 19th January 2002 and 28th February 2002. The learned counsel appearing for petitioners is not in a position to show that this finding recorded by the Appellate Tribunal is wrong.

2. The second challenge was to the direction contained in the award for payment of V-sat charges. These charges were being recovered by the respondents from the petitioners because the respondents had paid those charges to the Stock Exchange for providing the

facility of V-sat terminal. The challenge is that there was no agreement between the petitioners and the respondents making the petitioners liable to pay V-sat charges. It is common ground before me that the V-sat charges are payable to the Stock Exchange because the Stock Exchange provides the facility of terminal. It is also not in dispute that this facility of terminal was admittedly provided by the Stock Exchange to the petitioners and that the facility was provided by the Stock Exchange to the petitioners through the respondents. The Sole Arbitrator as well as the appellate Tribunal have held that as the facility was actually availed of by the petitioners, the petitioners cannot deny their liability to pay the charges. The case of the petitioners is that though they were using the terminal, they were not liable to pay charges because there was an oral arrangement arrived at between the petitioners and the respondents that because the petitioners were providing bulk orders, they will not be liable to pay V-sat charges. Admitted position is that though the petitioners rely on oral agreement between the parities in relation to V-sat charges, the petitioners have not led any oral evidence or have not produced any document which will prove existence of such oral understanding. Therefore, the challenge to the award in this regard also fails. Taking overall view of the matter therefore, in my opinion, there is no

justification for disturbing the award impugned in the petition. Petition therefore fails and is dismissed. Petitioners are directed to pay costs of this petition to the respondents as incurred by the respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.